

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KRISTIN HARDY,

Plaintiff,

v.

R. MORENO, et al.,

Defendants.

Case No. 1:21-cv-00327-KES-EPG (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS (Doc. 237) TO:

- 1) GRANT DEFENDANTS' REQUEST FOR JUDICIAL NOTICE, DEFENDANTS' MOTION TO FILE CONFIDENTIAL MEMORANDUM UNDER SEAL, AND PLAINTIFF'S MOTION TO FILE CONFIDENTIAL MEMORANDUM (Docs. 186, 232, 236)
- 2) GRANT MOTION FOR SUMMARY JUDGMENT FILED BY DEFENDANTS VALENCIA, MORENO, CHAVEZ, AND DOHS, AND DISMISS THEM FROM THIS ACTION (Doc. 184); AND
- 3) DENY PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Doc. 170).

Plaintiff Kristin Hardy is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed under 42 U.S.C. § 1983. Plaintiff sued correctional officers Valencia, Moreno, Chavez, Dohs, and Ceballos, alleging that after a full-body scan at North Kern State Prison (NKSP), he was then also strip searched without justification. Doc. 237. Defendants Valencia, Moreno, Chavez, and Dohs move for summary judgment. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 13, 2024, the assigned magistrate judge issued findings and recommendations, recommending that defendants' request for judicial notice (Doc. 186), defendants' request to file under seal (Doc. 232), and plaintiff's motion to file confidential memorandum (Doc. 236) be granted. The magistrate judge also recommended that Valencia, Moreno, Chavez, and Dohs'

1 motion for summary judgment (Doc. 184) be granted and plaintiffs' motion for summary
2 judgment (Doc 170) be denied. Plaintiff filed objections and defendants responded to the
3 objections. Docs. 238, 239.

4 In accordance with 28 U.S.C. § 636(b)(1), this Court has conducted a de novo review of
5 this case.

6 **I. Request for Judicial Notice (Doc. 186), Request to File Under Seal (Doc. 232),**
7 **Motion to File Confidential Memorandum (Doc. 236)**

8 The findings and recommendations recommend that the Court grant defendants' request
9 for judicial notice and take judicial notice of regulatory changes to Cal. Code Regs. tit. 15 § 3287
10 published in the California Regulatory Notice Register. Doc. 237 at 7-8. Plaintiff objects,
11 arguing that the documents are not subject to judicial notice because "the document purporting to
12 show that the x-ray scan regulations were not in effect on 1-6-19 is subject to dispute." Doc. 238
13 at 6. However, as the magistrate judge noted, the regulations from the California Regulatory
14 Notice Register are from a source whose accuracy cannot reasonably be questioned. As such, the
15 Court adopts the recommendation to take judicial notice of the regulatory changes to Cal. Code.
16 Regs. tit. 15 § 3287.

17 Defendants moved to file a confidential memorandum under seal and plaintiff also moved
18 to file the memorandum under seal. Docs. 232, 236. The findings and recommendations
19 recommend that the confidential memorandum be filed under seal for the same reasons that
20 justified entering a protective order (Doc 165). Doc. 237 at 8-10. The Court adopts the
21 recommendation for the confidential memorandum to be filed under seal.

22 **II. Motions for Summary Judgment (Docs. 184, 171)**

23 With respect to the defendants' summary judgment motion, the magistrate judge found
24 persuasive the argument that the four moving defendants did not participate in the unclothed body
25 search at issue here, which the magistrate judge found was done solely by defaulting defendant
26 Ceballos without knowledge of or direction from the other defendants. Doc. 237 at 14–17. For
27 the same reason, the magistrate judge also recommended that plaintiff's motion for summary
28 Judgment (Doc. 170) with respect to these defendants be denied. Although the magistrate judge

1 recommended summary judgment for defendants Valencia, Moreno, Chavez, and Dohs, the
2 magistrate judge recommended that the Court reject the alternative argument that the June 6, 2019
3 unclothed search by Ceballos was reasonable as a matter of law.

4 Plaintiff objects to the magistrate judge's decision to not fully consider and rule on all of
5 plaintiff's objections to defendants' separate statement of undisputed facts and to defendants'
6 arguments regarding the liability of defaulted Defendant Ceballos. Doc. 238 at 6–7. The
7 magistrate judge's decision not to rule on all of plaintiff's objections was not erroneous. The
8 magistrate judge determined that most of the evidentiary disputes were not material and were not
9 relevant to the issues before the Court. Doc. 237 at 13, n.5. Additionally, since defendant
10 Ceballos has not appeared or otherwise offered a defense, plaintiff has obtained a clerk's entry of
11 default against defendant Ceballos (Doc. 48) and has filed a motion for default judgment (Doc.
12 50). The magistrate judge reserved ruling on the motion for default judgment until resolution of
13 the claims against the other defendants. Doc. 237 at 2 n.1.

14 Plaintiff also argues that the evidence indicates that the defendants set in motion Ceballos'
15 search and that the magistrate judge did not "adequately address" plaintiff's motion for summary
16 judgment. Doc. 238 at 4-5. However, plaintiff essentially repeats many of the arguments he
17 raised in his motion for summary judgment and in opposition to defendants' motion. Doc. 238 at
18 3–6. These arguments were correctly addressed in the findings and recommendations. Doc. 237.

19 Having carefully reviewed the entire file, including plaintiff's objections and defendants'
20 response, the Court concludes the findings and recommendations are supported by the record and
21 proper analysis.

22 Accordingly:

- 23 1) The findings and recommendations issued June 13, 2024 (Doc. 237) are ADOPTED
24 IN FULL;
- 25 2) Defendants' request for judicial notice (Doc. 186) is GRANTED;
- 26 3) Defendants' motion to file confidential memo under seal and plaintiff's motion to file
27 confidential memorandum (Docs. 232, 236) are GRANTED;
- 28

1 a. Defendants shall file the confidential memorandum under seal pursuant to
2 Local Rule 141;

- 3 4) Defendants Valencia, Moreno, Chavez, and Dohs' motion for summary judgment
4 (Doc. 184) is GRANTED and these defendants are dismissed from this action;
5 5) Plaintiff's motion for summary judgment (Doc. 170) is DENIED; and
6 6) The case is referred to the assigned magistrate judge for further proceedings as to
7 defendant Ceballos on plaintiff's motion for default judgment (Doc. 50).
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9

10 IT IS SO ORDERED.

11 Dated: March 25, 2025



UNITED STATES DISTRICT JUDGE